

FINAL STATEMENT OF REASONS:

The Initial Statement of Reasons (ISOR) is incorporated by reference.

The California Prison Industry Authority (CALPIA) and the California Prison Industry Board (PIB) propose to adopt Section 8006 of Article 4, Chapter 1, of the California Code of Regulations (CCR), Title 15, Division 8, concerning CALPIA Inmate Pay. The Office of Administrative Law (OAL) has published a Determination regarding CALPIA policies, (CTU 2009-11-9-01) determining that CALPIA inmate pay schedules meet the definition of a regulation in Government Code Section 11342.600. These regulations are meant to address this Determination by adopting regulations pursuant to the Administrative Procedure Act (APA).

The policies of the CALPIA have been vetted through the public process of the PIB, as required in PC 2808 (h) and (i), and now are being promulgated through the regulatory process as specified in the APA. The PIB approved the filing of these regulations at their Board Meeting on October 21, 2011. The PIB's Record of Vote and a portion of the transcript of the minutes were filed as an attachment to the Initial Statement of Reasons. These documents represent a true account of the PIB's meeting. The vote of the PIB was unanimous for the approval of the regulations to be filed with OAL.

CALPIA's Notice of Proposed Regulations was filed with the Office of Administrative Law (OAL) on February 7, 2011 and was published on February 18, 2011. The public hearing was held on January 24, 2012. There were no public comments received at the public hearing. During the 45-day comment period, two written comments were received and are summarized and responded to below.

This action adopts language into the CCR that implements, interprets, and makes specific policies and procedures that apply to CALPIA and the PIB and have been approved by the PIB. These regulations further provide a clear reference by staff, inmates, and the public in general.

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to effectuate the purpose for which it is proposed was initially addressed in the Initial Statement of Reasons. The text of the regulations was not amended and no new information was relied upon.

ALTERNATIVE DETERMINATION:

The CALPIA and the PIB have determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

The CALPIA and the PIB have determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the CALPIA that would lessen any adverse impact on small business.

The CALPIA and the PIB have determined that the proposed regulations are not considered “major regulations” as defined in Government Code 11342.548. Additionally, CALPIA funding, (Prison Industries Revolving Fund) pursuant to Penal Code Section 2806, is not subject to the provisions of Articles 2 (commencing with Section 13320) and 3 (commencing with Section 13335) of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code, and therefore is not required to prepare a standardized regulatory impact analysis as specified in Section 11342.548.

The CALPIA and the PIB have made a determination that the action may not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the CALPIA and the PIB’s initial determination.

The CALPIA and the PIB have determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

In proposing these regulations, the CALPIA and the PIB have not identified or relied upon any technical, theoretical, or empirical study, report, or similar document.

PUBLIC HEARING COMMENTS:

Public Hearing: Held January 24, 2012 at 10:00 a.m.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:

There were no speakers/commenters at the Public Hearing.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

Commenter #1:

Comment 1: Commenter states that he has a current commitment to Avenal State Prison (ASP) and is currently in his twentieth year of that commitment. He states that while at another institution in Solano, he was assigned to the PIA Optical Lab. Upon his arrival at ASP he was assigned to the PIA Furniture Factory and was in that position for approximately two years. He states that he acquired a heart condition. He further states that he was informed by the Parole Board that it would be beneficial for him to acquire another trade. At that time he worked various

job within the institution. When he decided to return to work for PIA Metal Fabrication he states was informed that no inmates with a Life sentence could be assigned unless they had a skill to work at the Metal Fabrication. He states that he submitted four requests for interview, and received one and a promise of another. He states he was informed in the first interview that he was too old (age 71), and the second stated that he would be hired for the Tool Room, which he contends never happened. He states that his main point is that he is a Lifer with no Metal Fabrication skills, yet he contends that PIA will assign a non-lifer with no skills and no age qualifier and assign them to a random position in the factory to fill an open slot. He states that he is seeking an assignment with real life experience. The commenter asks the question if there is a viable restriction that a “Lifer” needs to deal with; why not hire a “Lifer” on the same basis PIA currently use for Non-Lifers, but limit employment to a 3-year term. He states that at the end of that term, the “Lifer” is reassigned to a non-PIA work site, then after one calendar year the “Lifer” may request to be placed on the PIA waiting list, and treated the same as a non-lifer. He contends that his current assignment is a special hire doing optical fabrication for the Lion’s Club.

Accommodation: No

Response: Although the above comment does address an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to GC Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Commenter #2:

Comment 1: Commenter asks why in the proposed regulations is there no mention of the statutory requirement of the true purpose of these wages, which he contends is punitive.

Accommodation: No

Response: CALPIA disagrees with commenter. The Initial Statement of Reasons clearly states the statutory requirements regarding a compensation schedule for inmate workers. New Section 8006 is adopted to make specific Penal Code Section 2811 which directs the General Manager of CALPIA to adopt and maintain a compensation schedule for inmate workers. Subsection 8006(a) is adopted to restate statute that the General Manager, determines the compensation inmates who are assigned to CALPIA work programs receive. This regulation also provides for the approval by the PIB for inmate compensation. These regulations are necessary to layout the requirements of statute regarding inmate compensation in a clear and concise manner so that CALPIA inmates are informed that compensation shall be in accord with the graduated pay schedule, and based upon statutory language that inmate compensation is based on quality and quantity of work performed. Because statutory language of “quality and quantity” is vague, it is also necessary to state that compensation will be based upon technical skills and abilities required for its performance; CALPIA disagrees that the wages set are punitive. This ensures that staff, supervisors and inmates understand that receipt of compensation is based upon the inmate exhibiting technical skills or the performance of specialized techniques and possess the

competence to work at their assigned skill level. These regulations are necessary to address OAL Determination (CTU 2009-11-9-01) by adopting regulations regarding inmate pay pursuant to the APA; to assure that the PIB is not only made aware of inmate compensation but that they are a part of the approval process.

Comment 2: Commenter asks that how are these regulations of extremely low wages for prison labor not in violation of the 1948 Declarations of Human Rights which holds prisoner's labor shall not be below that of the country's prevailing wage – which in California and the United States is minimum wage?

Accommodation: No

Response: CALPIA disagrees with commenter in that there is no violation of the 1948 Declarations of Human Rights. In the Initial Statement of reasons the following explanation was provided that fully explains the rationale for the wage rate chosen by CALPIA. Senate Bill 1574 authorized the Department of Corrections to use, in part, inmate labor to build new prisons throughout the State. The Summary of Prison Industry Legislation states, regarding Prison Wages that “The historical argument against prison labor was that it constituted involuntary servitude.” Inmate wages have been traditionally low, but some states have increased wages to permit prisoners to manufacture prison-made goods or in the original set up of the Prison Industry Authority to help with the construction of new prison facilities. Prison industries are historically state-run and –owned and limited in their range of work opportunities. CALPIA enterprises are typically different and expand those opportunities, and to introduce a more real-world work environment. While no stated reason could be found in any historical documentation or by interviewing actual witnesses to this 1982 event as to how the inmate pay schedule was originally determined by the Legislature or the PIB, a reasonable conclusion can be made that CALPIA pay schedule was modeled in part after the Department of Corrections’ (now CDCR) inmate pay scale; and the pay for CALPIA inmate workers would be at a higher amount which would provide incentive and encourage inmates to come work for CALPIA. The Federal Minimum Wage in 1982 was \$3.35 an hour (Source is the Bureau of Labor Statistics, Monthly Labor Review). PC Section 2811 states that in no event shall compensation exceed one-half the minimum wage provided in Section 1182 of the Labor Code, except as otherwise provided in this code. Half the minimum wage was \$1.67; inmate wages range from \$.30 to \$.95 per hour. This wage scale was apparently determined to be fair wages for inmate labor. Since 1982 there have been discussions regarding raising the inmate wage rate. Although half the minimum wage today is \$3.875, the General Manager has reviewed the inmate wage rate and most recently decided not to increase the inmate wage due in part to the economic crisis faced by the State of California and State agencies for many years.

Furthermore, the CALPIA program is a voluntary work program and does not force any inmate to work in its program. Inmates choose to apply to work for CALPIA, which pays among the highest levels within the California Prison System.

ADDENDUM TO THE FINAL STATEMENT OF REASONS

As specified in 1CCR12(b)(1), the CALPIA and the PIB acknowledge that language contained within these regulations is a re-statement of law found in Penal Code (PC) sections 2806 and 2811. In justifying the re-statement of statute, the CALPIA and the PIB contend the re-statement is not only helpful as it clarifies the inmate pay specific to CALPIA inmates and the funds from which CALPIA inmates are paid, but is necessary to satisfy the requirements of GC Section 11349.1(a)(3) providing clarity in specific sections as set forth in these regulations. This avoids any confusion with regards to the source of CALPIA inmate compensation and the authority and the fund by which CALPIA inmates are paid. The construction of Chapter 6 of the PC may tend to confuse or could be misinterpreted by CALPIA staff, inmate workers and the public as its layout with regards to inmate pay and the authority of the General Manager to determine CALPIA inmate compensation. Statutes specific to CALPIA and the PIB are spread out and are not in one tightly woven format; therefore, re-statement of statute within these regulations offers a clearer, more condensed format, in an attempt to alleviate any confusion, enabling staff, inmates, and the public in general to more fully understand CALPIA inmate pay rates, schedule and movement.